

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
FILED
SCRANTON

IN RE: ERIK FUNK V. C/O SILVERIO, et al. MAY 12 2021

PER DEPUTY CLERK

ORDER TO SHOW CAUSE
AND TEMPORARY RESTRAINING ORDER

UPON CONSIDERATION AND SUPPORTING DECLARATION
OF PLAINTIFF AND THE ACCOMPANYING MEMORANDUM OF
LAW IT IS

ORDERED THAT DEFENDANT C/O SILVERIO AND SON
ZICO STORE CAUSE IN THE UNITED STATES
COURTHOUSE, 235 NORTH WASHINGTON AVENUE,
SCRANTON, PA 18501 ON THE DAY OF
AT AM/PM WITH PRELIMINARY INJUNCTION
SHOULD NOT ISSUE PURSUANT TO RULE 65(a), F.R.C.P.
P. CIV. P., enjoining the said defendants, their
successors in office, agents, and employees and
all other persons acting in concert and
participation with them, to provide a medically
appropriate course of physical therapy to the
plaintiff design to restore and maintain the full
function of his ankles, wrist, and eye that
were closed shut by C/o silverio and complete
body pin/shock.

IT IS FURTHER ORDERED THAT EFFECTIVE IMMEDIATELY
AND PENDING THE HEARING AND DETERMINATION OF THIS
MOTION, DEFENDANT SILVERIO AND ZICO SHALL RELEASE
FOR PLAINTIFF TO BE EXAMINED BY A QUALIFIED EYE DR
HEAR-DETECT SPECIALIST, AND QUALIFIED ORTHOPEDIC DR
AND DR. DIBBLE (OR WHOM SPECIALIST) FOR AN EVALUATION
OF THE CONDITIONS OF PLAINTIFF'S ANKLES, WRIST, HEAD,

16/2

and eye closed shot and a prescription for
a course of physical therapy for his body that
will restore and maintain the full function of
ankles, wrist, hand, body, and eye closed shot

It is further ordered that this order to the
Court, and the order passed according to the
applicable statute be served at C/O SILVERIO, SPC
ZTCO by and the United States
Marshals Service is hereby directed to effectuate
such service

United States
District Judge

copy
15.2

Plaintiff and I suffer irreparable harm if my conditions are not thoroughly treated. By this physical and mental pain and suffering.

7) together Prime Care and Warden Health together they can care together to get me the proper medical treatment I need from this brutal assault

8) For the reasons set forth in the memorandum of law filed with this motion I'm entitled to a TRO for Silverio and Zito and for arrangements to be made to immediately take me to pacora medical center for emergency medical care and for a preliminary injunction for Prime Care and Warden Health to give me proper medical treatment and keep Silverio and Zito away from me.

9.) for these reasons, the court should grant the plaintiff's motion in all respects

Pursuant to 28 U.S.C. § 1746, I declare, under the penalty of perjury that the foregoing is true and correct.

Respectfully Submitted

✓ Erik C. Funk

STG: Erik C. Funk

PCB
Dated: 5-8-21

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IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT

RE: Funk v. §/o Silverio, et al. #

MEMORANDUM OF COUNSEL

IN SUPPORT OF TRO AND IN SUPPORT OF PRELIMINARY INJUNCTION

Statement of Case:

This civil action brought under 42 U.S.C. 1983 by prisoners who head was bashed in, eye closed shut, and injuries on the ankles and wrists, and staff depriving me appropriate medical care, Plaintiff seeks a TRO and preliminary injunction to be separated from Sgt. 2/12 and §/o Silverio and to receive proper medical care.

Statement of Facts:

As stated in the declaration submitted with this motion, §/o Silverio and Sgt. 2/12 assaulted me while in shackles and handcuffs, I was denied medical treatment by Nurse Daily, defendants are not providing proper medical care for his pain and suffering, stiffness, closed eye shut, head injuries, body pain, and wrist and ankle pain. In fact, defendants are trying to cover it up and why I need immediate medical care/mental and physical therapy, and to continue to deprive me of medical care, I will suffer irreparable harm.

ARGUMENT

Point 1: the Plaintiff is entitled to a temporary

restraining order and a preliminary injunction -
 is determining whether a party is entitled to
 a TRO or a preliminary injunction, courts
 generally consider several factors: whether the
 party ~~asserted~~ will suffer irreparable injury,
 the balance of hardships between the parties, the
 likelihood of success on the merits, and the
 public interest. Each of these factors favor
 grant of this motion.

(a) The plaintiff alleges that he was brutally
 assaulted, deprived medical care to his
 serious medical need contrary to his injuries
 and such conduct to assault an inmate (42 U.S.C.
 1983) and ~~1985~~ AND KNOW HE WILL DO IT
 AGAIN AND HARASSED TO TALK HER ABOUT ~~THE (TRO)~~
 AND US DAILY CEASE VIOLENCE OF 8th Amendment
 AND 14th Amendment VIOLENCE. Estelle v. Gamble,
 429 U.S. 97 - that intentional interfering with
 treatment that needs to be prescribed is a form
 of unlawful deliberate indifference... As a
 matter of law, the continued deprivation of
 constitutional rights constitutes irreparable harm. In
 addition, the plaintiff is threatened with
 irreparable harm (pecuniary) because ~~Set 2~~ if
 now wants to harass me, they ~~2~~ if and ~~1~~ (1983)
 are assaulting inmates committing crimes, and the
 nature of my injuries that requires emergency
 medical treatment that if I do not receive
 proper treatment at the paper fine, I can
 die, I'm in pain, it hurts... I need to go to
 the hospital.

(b) In deciding whether to grant a TRO and

preliminary injunction, courts ask whether the suffering of the moving party if the motion is denied will outweigh the suffering of the non-moving party if the motion is granted. Mitchell v. Cuomo, 748 F.2d 804, 808 (2d Cir. 1984) - holding that ~~defendant's~~ ~~prisoners~~ ~~interest~~ ~~in~~ ~~safety~~ ~~and~~ ~~medical~~ ~~outweighed~~ ~~state's~~ ~~interest~~ ~~in~~ ~~saving~~ ~~money~~ ~~by~~ ~~cutting~~ ~~staff~~.

the present suffering (pain and mental anguish and harassment by Zito who think has unfounded side tie (in assaulting inmates) and my potential suffering if I permanently lose my eye or my head and body injuries become permanent. The suffering (in experience of the court grants the order will consist of taking plaintiff to the hospital or suitable DR. then carrying out DR orders, and to completely separate me from Sgt. Zito and Silverio who should be barred from entering the building to stop the assault, harassment, and infidelity by these guards and my hardship amounts to no more than business as usual.

(E) I will likely proceed on the merit and what defendant daily did was intentionally interfere with medical treatment, intentionally assault assault by Zito and Silverio which is all unconstitutional to a perform defense and the relief sought will serve the public interest this is known from our Supreme Court stating - The Constitution is the ultimate expression of the public interest and these beliefs are the of me and others and go's without they are

above the law committing crimes and depriving
 of medical care to cover up what was done to
 me and the serious medical dangers
 confronting the plaintiff, this brutal assault
 on my head, body, and my eye completely
 blind while in handcuffs and shackles. I am
 scared, and this is not an isolated incident,
 this court should grant the relief requested
 or I risk being killed, mentally damaged,
 harassed, and I will be confined assaultive cells
 in shackles and handcuffs

for the foregoing reasons, the court
 should grant the motion to sue Preliminary
 injunction in its entirety or whatever the court
 deems just

Religious of Flowers v. Phillips, 956 F.2d 488, 489
 5th Cir. 1992; Cooper v. Casey, 97 F.2d 914, 919-20
 5th Cir. 1996; Helton v. trustee, 241 F.Supp. 2d 1313,
 1319, 1323 (S.Kan. 2003); Miller v. Shelby County, 98 F.
 Supp. 2d 892, 902 (W.D. Tenn. 2000); St. Louis v. Monge,
 815 F.2d 1467, 1468 (11th Cir. 1987); Lewis v. Coop., 771
 F.2d 334, 335 (7th Cir. 1985); AND PUNITIVE DAMAGES
 NEED TO BE AWARDED TO PUNISH THEM FOR THEIR
 ACTIONS AND SUPPOSE TO THEM SO AS TO DETER
 DEFENDANTS REPETITIVE CONDUCT. AND AS IN
 Walker v. Morris, 917 F.2d 1449, 1457 - while guards
 looked on and did nothing to watch Zito and
 Silvestro brutally assault me, the use of excessive
 force to cause serious injuries to deprive me medical
 care I pray, this court grant me a TRO
 and preliminary injunction against Zito and Silvestro

DATED:

Respectfully submitted,
 ✓ Erik C. Funk
 ✓ SILER LAW COUNSEL

9.

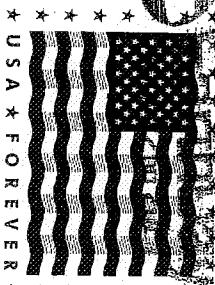
Print

ERIK FUNK (envelope)

4250 Monroeville
Stroudsburg, PA 18301

LEHIGH VALLEY R

10 MAY 2021 PM



OFFICE of the Clerk

UNITED STATES DISTRICT COURT

RECEIVED
SCRANTON WILLIAM S. NEALON FEDERAL BLDG. AND U.S. COURTHOUSE

MAY 12 2021

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DEPUTY CLERK
Scranton, PA 18501-1148

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